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"For Thus His Neglect": Grand Jury Presentments for Failure to Attend Church, York County, Virginia, 1750-1775

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"FOR THUS HIS NEGLECT"
GRAND JURY PRESENTMENTS FOR FAILURE TO ATTEND CHURCH
YORK COUNTY, VIRGINIA, 1750-1775

A Thesis
Presented to
The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

by
Leslie M. Kesler

1992

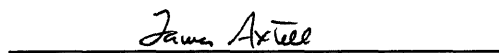
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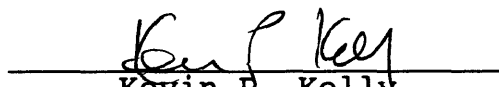
This thesis is submitted in partial fulfillment of
the requirements for the degree of

Master of Arts


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Approved, December 1992


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Thanks are also due to several individuals at the Colonial Williamsburg Foundation. Linda Rowe shared with me the list of York County residents presented for not attending church which she had compiled. She also helped me understand how the grand jury system worked and introduced me to the resources of the York County Records Project. Julie Richter gave additional advice on using the York County records. When I was just beginning this project John Turner provided valuable bibliographical suggestions. Lisa Kaue generously took the time to track down a mysterious reference to Susannah (Brush) Fontaine which I had mentioned to her.

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ABSTRACT

This study examines residents of York County, Virginia who were prosecuted for not attending church between 1750 and 1775. Special attention is paid to whether or not local officials enforced the church attendance law selectively, singling out county residents who might be perceived as threats to the social order.

Chapter I examines evidence that Anglican church government, church architecture, the liturgy, and local social customs emphasized the hierarchical nature of society and affirmed the domination of the political and economic elite. The possibility that the rise of Separate Baptist churches in Virginia presented a social challenge to the Virginia gentry is raised.

Chapter II examines the church attendance laws and describes the process of grand jury presentments, using the presentments made at one specific court date as an example. Because the both grand jurors and justices influenced the presentment process, special attention is paid to the different backgrounds and potential biases of men in these two groups.

Chapter III looks at the people presented for not attending church and attempts to identify patterns in the presentments over the twenty-five year period. The occupations, wealth, officeholding histories, and ages of offenders are studied to determine whether or not offenders were usually people of relatively low status in the community. Local events which might have influenced presentments are discussed. The influence of individual grand jurors on the presentment process is investigated.

The results of this study suggest that although jurors cited several people who might be considered threats to the social order for non-attendance at church, they did not consistently single out such people. Neither did justices discriminate against people of low status when deciding cases.

The pattern of grand jury presentments changed only minimally as the Separate Baptist movement reached its peak. Fear of the social challenge posed by the Baptist movement may have influenced presentments for not attending church, but it did not drive them. Economic conditions and ideas about age-appropriate religious behavior also influenced presentments.

"FOR THUS HIS NEGLECT"

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IN YORK COUNTY, VIRGINIA, 1750-1775

INTRODUCTION

On March 19, 1753 in accordance with the laws of the colony of Virginia the justices of York County "ordered that the sheriff summon twenty-four of the most capable freeholders of this county to appear here on the third Monday in May next to serve as a grand jury of inquest for the body of this county."¹ On May 21, twenty-two of the twenty-four men summoned appeared at the courthouse in Yorktown.²

The men swore the oath prescribed for grand jurors. They were bound to "present no man for hatred, envy, or malice, neither leave any man unpresented for love, fear, favor, or affection, or hope of reward; but present things truly . . . to the best of your understanding. So help you God."³

¹York County Virginia Judgments and Orders: 1752-1754, (Salt Lake City: Genealogical Society, 1954), microfilm, 2:194. Throughout this paper capitalization, punctuation and spelling have been modernized in direct quotations from eighteenth-century sources and most abbreviated words have been spelled out.

²The proceedings of this court session are found in York County Judgments and Orders: 1752-1754, 2:206-221.

³The exact wording of the oath sworn by York County jurors is unknown. The quotation is from one such oath used in
(continued...)

The jurors were formally charged and left the courtroom. After some discussion they returned with an agreed-upon list of offenders against moral and civil law. The group's foreman, forty-three-year-old Thomas Roberts, read the list to the court and the names were duly entered in the order book. "And then," clerk Thomas Everard recorded dutifully, "the grand jury having nothing further to present were discharged."⁴

The jurors had taken the first step in prosecuting thirty county residents for breach of the moral and civil law. Sarah Bratenham stood accused of having a bastard child. The members of the grand jury accused John Wormley, William Willcox, and John James Hulett of unlawful gaming. They denounced William Stanup as a "common swearer," and, on a more practical note, indicted "John Tenham surveyor of the Brook road for not keeping it in repair." But the most common charge by far was that of "absenting himself from his parish church." The grand jurors accused twenty-four residents of York County of this crime.⁵

³(...continued)

Virginia. A. G. Roeber, "Authority, Law, and Custom: The Rituals of Court Day in Tidewater Virginia, 1720 to 1750," William and Mary Quarterly 37 (1980): 29-52, 43-44.

⁴York County Judgments and Orders: 1752-1754, 2:207-208. The charging of the jury and the reading of the presentments are described in Roeber, "Authority, Law, and Custom," 44-46.

⁵York County Judgments and Orders: 1752-1754, 2:207-208.

The laws of colonial Virginia required semi-regular church attendance. Residents were obliged to participate in religious services at least once a month; the requirement could be met by attending either an Anglican or a dissenting church.⁶

Compulsory religious observance was not unique to Virginia. Mandatory church attendance had long been the rule in England and English colonies, both Anglican and dissenting. In Virginia, however, violations were handled differently than in the mother country. In the absence of ecclesiastical courts the county courts had sole responsibility for disciplining church absentees.⁷ These courts were presided over by "gentlemen justices," men of wealth and status who were the leaders of the local society.

The same sort of men -- and in fact often the same individuals -- also dominated the parish churches through appointment to the vestry. Virginia vestries achieved influence and exclusivity far beyond their English counterparts. The power of the vestry, local church-going customs, architectural conventions, and the hierarchical elements of the Anglican liturgy combined to imbue the

⁶William Waller Hening, The Statutes at Large; Being a Collection of all the Laws of Virginia (1819-1823; reprint, Charlottesville: University Press of Virginia, 1969), 3:360-361, 5:226.

⁷George MacLaren Brydon, Virginia's Mother Church and the Political Conditions Under Which it Grew (Philadelphia: Church Historical Society, 1952), 1:83, 1: 285-286.

Anglican service in Virginia with an implicit social message.⁸ Along with religious instruction the Virginian parishioner received an education in deference and the propriety of a social hierarchy. Might and right appeared congruent. *As it was in the beginning, is now, and ever shall be: world without end. Amen.*

In this context, refusal to attend church services can be construed as a subtle challenge to the dominance of the Virginia gentry. Prosecution for absence may be interpreted as a defense of the hierarchical social order.

One way to test this hypothesis is to thoroughly examine prosecutions for not attending church in one locality: York County. What was the cultural meaning of church attendance to Englishmen and to Virginians? What were the laws regarding church attendance and how exactly were they enforced in Virginia? Most important: who were the individuals presented by the grand juries of York County and what does their collective biography reveal about the cultural significance of church attendance?

⁸On the Anglican Church in Virginia see Brydon, Virginia's Mother Church; Rhys Isaac, The Transformation of Virginia: 1740-1790 (New York: W. W. Norton and Company, 1982); Arthur Pierce Middleton, "Anglican Virginia: The Established Church of the Old Dominion 1607-1786" (Research Report, Colonial Williamsburg Foundation, Williamsburg, VA, n.d.); and Dell Upton, Holy Things and Profane: Anglican Parish Churches in Colonial Virginia (Cambridge, MA: MIT Press, 1986).

CHAPTER I

THE HOUSE OF THE LORDS AND "THE LORD'S BARN:" THE MEANING OF CHURCH ATTENDANCE IN THE EIGHTEENTH CENTURY

A seventeenth-century Englishman did not choose to be involved in his church. Involvement was forced upon him. The parish church circumscribed his life from the day his baptism was recorded in the parish books to the day he was laid to rest in the churchyard. The local parson christened and catechized him, married him and buried him. Parish officials taxed him. They maintained his church and the roads on which he travelled to it. If he owned land, they determined and recorded the boundaries of his property. If he owned nothing, they administered poor relief. They reminded him of his moral obligations and took action against him when he failed to fulfill them.¹ In short, the church affected all aspects of his life. It was more than a religious institution; it was the social structure of the local community.

In this context, attendance at the mandatory church services was only the smallest part of a person's

¹Middleton, "Anglican Virginia," 27-29.

involvement with the church. But it was a crucial part. If the local parish was the building block of the social order, the church service was the symbolic reaffirmation of that order. By going to church people both demonstrated and affirmed their places in the social order which was defined and represented by the church.

Of course, this is a simplification. Despite laws requiring their attendance, many of those at the bottom of the social ladder may have seldom crossed the threshold of the parish church.² At the same time, the rise of dissenting denominations led many consciously to spurn the Anglican ritual in favor of some other form of worship. However, no one wholly escaped the influence of the Church of England. It permeated the most mundane details of everyone's daily life and subtly shaped people's expectations of church and society.

This was true of English emigrants to the New World, as well as those who remained in England. Far from ecclesiastical authorities and faced with an unfamiliar environment, colonists were free to revise the English parish system or to develop their own institutions. They did both. Yet the churches they created in the New World

²Christopher Hill, Society and Puritanism in Pre-Revolutionary England (New York: Schocken Books, 1964), 472-473. For a recent summary of evidence of low religious participation on the Continent as well as in England, see Jon Butler, Awash in a Sea of Faith: Christianizing the American People (Cambridge, MA: Harvard University Press, 1990), 18-19, 31.

fulfilled the same functions as the Church left behind in England. They explained the inexplicable, helped the helpless, corrected the incorrigible, and asserted and represented order in a disorderly world. They provided a framework within which to understand the world, and ritual actions through which to express that understanding. In America, as in England, the churches had a social as well as a religious function. This was true regardless of the particular denomination of the church.³

At the time of colonization, English religious life was in a state of flux. Political and economic turmoil, as well as theological debate, pulled the English church first in one direction, then in another. The series of laws and proclamations imposed, revoked, reinstated and revised during the sixteenth and seventeenth centuries testifies to the ambivalence of the successive monarchs. Their motives for changing the laws were as often political as theological.

In sixteenth-century England, Sunday was a day for recreation as well as worship. Country-dwellers celebrated the day of rest with sports and games; some townspeople visited the theater. But by the mid-sixteenth century many had come to believe that these recreations distracted

³In these first paragraphs I have drawn heavily on ideas found in Isaac, The Transformation of Virginia; Darrett B. Rutman, "The Evolution of Religious Life in Early Virginia," Lex et Scientia 14 (1978): 190-214; and Upton, Holy Things and Profane.

people from appropriate Sabbath worship. In 1547 Edward VI issued the Royal Injunctions, inveighing against those who acted as if mere presence at morning worship fulfilled their religious duties. He enjoined people to spend the whole of Sunday studying the Bible and doing good works. Five years later, Parliament passed the Holy Days and Fasting Days Act, reducing the number of feast days observed in England by two-thirds and requiring people to spend these holidays in religious worship and good deeds. At the same time, the Act of Uniformity required everyone to attend the parish church each Sunday, although no penalties were established for non-compliance.⁴

These measures lasted less than a decade before Mary Tudor revoked them and returned the country to Catholicism. Her revisions were also short-lived. In 1558 Elizabeth I came to the throne, and the next year she issued another Act of Uniformity. This act allowed for variations in belief but required uniform observance. All people were required to attend worship at their parish church each Sunday and on other holy days. Those who disobeyed without a legitimate excuse faced a rebuke from the clergy and a fine of twelve pence.⁵

⁴Winton U. Solberg, Redeem the Time: The Puritan Sabbath in Early America (Cambridge, MA: Harvard University Press, 1977), 48-50, 25.

⁵Solberg, Redeem the Time, 25, 28.

Mandatory attendance at church remained the rule, but later monarchs resisted Puritan pressure for further Sabbatarian reforms. In 1618 James I issued the Declaration of Sports which recognized Sunday recreations as legitimate. Charles I renewed the declaration, ordering that "after the end of divine service our good people be not disturbed, [hindered] or discouraged from any lawful recreation, such as dancing, either men or women; archery for men, leaping, vaulting, or any other such harmless recreation, nor from having of May-games, Whitsun-ales, and Morris-dances . . . so as the same be had . . . without impediment or neglect of divine service."⁶

The quick succession of changes owed a great deal to contemporary religious thought and the development of Sabbatarianism. This doctrine, which developed in Elizabethan England, held that the Christian observance of the Lord's Day on Sunday was essentially related to the Jewish Sabbath of the Old Testament and should be observed with the same strictness. (By contrast, the Church of England held that the Lord's Day was a purely Christian institution, not bound by Old Testament laws.) The Sabbatarian view was most enthusiastically advocated by Puritans. They wished to see Sundays devoted to religious observance and especially to religious education. Since those most in need of guidance were those least likely to

⁶Quoted in Middleton, "Anglican Virginia," 90-91.

seek it, Puritans wanted everyone to be compelled to participate in Sunday worship.⁷

The government of England conceded some Sabbatarian reforms but resisted others. The monarchs and Parliament may have been motivated partially by genuine religious conviction, but for the most part their decisions were based on pragmatic political considerations. The Declaration of Sports was meant to ensure that people could engage in regular exercise; James I worried that otherwise men would become unfit for war. Elizabeth's Act of Uniformity was equally pragmatic: "Reasons of state rather than solicitude for souls underlay this insistence upon conformity, a provision aimed at Roman Catholic and radical Protestant alike."⁸

The Church of England and the English state were tightly intertwined and both had the authority to punish violators of the Sabbatarian laws. Usually churchwardens presented offenders to ecclesiastical courts which imposed fines, assigned penance, and, in rare cases, excommunicated people. When church discipline was not effective, church officials turned the offenders over to civil officials who prosecuted them in the secular courts.⁹

⁷Solberg, Redeem the Time, 2. Hill, Society and Puritanism, 175.

⁸Solberg, Redeem the Time, 72, 28.

⁹Solberg, Redeem the Time, 32.

To members of dissenting churches, the mental division between church and state was necessarily more distinct. The English Puritans who colonized New England brought with them the idea that both the church and the civil government should enforce church attendance, but they separated the two procedures more distinctly than they had been separated in England.

The pattern which developed in the Massachusetts Bay Colony became the standard for the rest of New England. The civil government took the lead in requiring and enforcing church attendance. Although not every colonist was a church member, government officials were responsible for seeing that everyone attended worship services. Penalties for non-attendance were well-defined and publicly known. A 1635 law established imprisonment or a fine of up to five shillings as the appropriate punishment for not attending church. The 1646 Book of the General Lawes and Libertyes fixed the punishment as a fine of five shillings. Attendance at church remained mandatory throughout the colonial period, but in 1712 the General Court revised the requirement. The fine increased to twenty shillings, but it would only be imposed after the fourth consecutive absence.¹⁰

The line between civil and church jurisdiction was distinct. The civil government could impose only temporal

¹⁰Solberg, Redeem the Time, 123, 129-30, 139, 131-32, 159-161, 295.

punishments; it could not excommunicate. On the other hand, excommunication and censure were the only penalties available to the church. Puritans saw membership in the church as both a privilege and an obligation; for a person admitted to the Lord's Supper to decline to participate was a sin. Because Puritan churches were autonomous, there was no system of ecclesiastical courts and responsibility for discipline fell to the individual church.¹¹

In most churches, a typical case began when one person noticed a fellow church member's failure to attend church. That individual mentioned the matter to the minister or an elder, who convened a meeting of church officials to discuss the situation. If they decided the offense was serious enough to warrant attention, the minister asked the congregation to attend a meeting after the next Sunday's service. After hearing the sin described, church members voted on whether or not to ask the offender to appear before them. If they decided yes, a deacon prepared a formal summons, requiring the accused to appear before the congregation on a subsequent Sunday in order to explain his or her behavior. If they found the explanation adequate, or if proper repentance was shown, church members might decide not to take action against their wayward sister or

¹¹Emil Oberholzer, Jr., Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts (New York: Columbia University Press, 1956), 13. Ola Elizabeth Winslow, Meetinghouse Hill, 1630-1783 (New York: Macmillan, 1952), 179. Oberholzer, Delinquent Saints, 31, 33.

brother. If they were not satisfied, they decided on a suitable punishment.¹²

The church was more flexible than the colony in enforcing church attendance. Church members took into account the circumstances surrounding the incident, the intentions of the offender, and the presence or absence of genuine contrition before assigning punishment. Often the penalty was more closely related to the attitude of the sinner than to the magnitude of the sin. Church members expected a public confession from their delinquent brother or sister. They were willing to wait, but if no confession ever came they often excommunicated the guilty person, more for impenitence than for the original offense.¹³

Emil Oberholzer has studied church disciplinary proceedings in the Massachusetts Bay and Plymouth colonies and in early Massachusetts. Civil law must not have been entirely effective in enforcing church attendance there because congregations were often compelled to take action themselves. Oberholzer found 130 recorded cases of absence from church before 1780. The outcome is known for only about half of the cases; in many of the others, the church may have noted the absence but decided not to discipline the offender. Prosecutions often came in groups; probably churches undertook deliberate and systematic prosecution

¹²Winslow, Meetinghouse Hill, 175-176.

¹³Winslow, Meetinghouse Hill, 181, 186. Oberholzer, Delinquent Saints, 37-38.

during periods of increased absenteeism. Across Massachusetts prosecutions for not attending church rose appreciably in the 1740s and 1750s, as the Great Awakening reached New England.¹⁴

For a small number of the cases, the church records include the reason for not attending church. Usually this was some defect in the person's relationship with the church or with other church members. One woman in Merrimac refused to partake of the Lord's Supper because she believed she was not in the proper spiritual condition. In 1651 a Boston man withdrew from his church because he opposed the singing of psalms, which he considered a modern innovation. More than one man withdrew from his church because he believed that it had slighted his family members or friends.¹⁵

Sometimes the problem was a specific conflict with another member; in some of these cases the church tried to solve the underlying problem instead of prosecuting the member who had withdrawn. When Elisha Tuttle stopped attending his church in Chelsea in 1742 because he believed fellow church members had snubbed him, the church members formally declared that they had no grudge against Elisha and would be happy if he returned to the church.¹⁶

¹⁴Oberholzer, Delinquent Saints, 44, 253, 46.

¹⁵Oberholzer, Delinquent Saints, 51-53.

¹⁶Oberholzer, Delinquent Saints, 50-52.

Fellow church members did not always accept these excuses, but they must have understood them. The concept of the covenant was one of the foundations of Puritan theology, and the relationship of the church members to each other and to the church was of paramount importance. For a Puritan the covenant had three components: the individual, God, and other church members. Church members were bound to each other by the covenant and were responsible for their neighbors' conduct as well as their own. This understanding of the covenant grew out of changing ideas about the nature of religion. Puritans began to see it "less as an intensely private experience, more as a basis for mutual privilege and obligation. . . . Professing Christians were conscious members of a special kind of society, and their relation to each other was deeply fraternal."¹⁷ Puritans considered harmony within the church so important that they refused to celebrate the Lord's Supper while church members were in conflict.¹⁸

Often the signing of a written covenant was one of the first actions of a group of Puritan colonists. Typically the entire settlement gathered to hear the document read and to watch as community leaders pledged and signed the covenant individually. Others could join the church later by making public professions of faith. Church members

¹⁷Oberholzer, Delinquent Saints, 17. Winslow, Meetinghouse Hill, 27.

¹⁸Winslow, Meetinghouse Hill, 119-120.

listened to these professions and voted to accept or reject each prospective member. At this most basic level of the church, social class made no difference. Anyone could be admitted as an equal participant in the covenant.¹⁹

At first the newly created church would meet outside. Later, meetings might be moved to a barn until a permanent meetinghouse could be built. A committee of between three and five church members usually took responsibility for the planning of the new meetinghouse, but its construction was truly a community effort. The planning committee determined the layout of the meetinghouse and chose a master builder from the village to oversee the construction. Almost every church member participated in the construction of the meetinghouse or in subsequent repairs, either by planning, helping with the construction, or supplying food and drink on the day of the raising. When completed, the meetinghouse became the joint property of all village residents; everyone had a financial stake in its well-being.²⁰

This first meeting house was typically small and plain, a result of necessity as well as ideology. It accommodated the present congregation with little room to spare, and even perched at the highest point of the village, it lacked visual importance. It had no spire and

¹⁹Winslow, Meetinghouse Hill, 22, 25-27.

²⁰Winslow, Meetinghouse Hill, 32, 54, 63-64, 54.

no stained glass windows. Often there were no windows at all, except for one small one near the pulpit, so that the minister could see to read his sermon. Such plain structures contrasted with traditional English churches, and some found the difference a cause for humor. The congregation of one church mockingly dubbed a neighboring Puritan meetinghouse "The Lord's Barn."²¹

The interior of the meetinghouse was also unimpressive. The builders left the beams exposed and the walls unplastered. Furnishings consisted of an elevated pulpit, a deacon's seat, and planks laid across the floor to serve as seats. At first the only decorative element might be a green velvet cushion on which the Bible rested. Later the church might install a canopy over the pulpit and vote to allow individuals to build pews at their own expense. As time went by the congregation would continue to make improvements -- building a stable, plastering the walls, replacing the thatch roof with shingles, or adding a gallery -- but the structure remained relatively plain.²²

The meetinghouse was more than a house of worship. It was the one place where the whole community met together. People assembled there for town meetings, and on Sundays and Thursdays they also met for religious meetings. The focus of these religious meetings was the sermon, which

²¹Winslow, Meetinghouse Hill, 52, 54 and 65, 55, 61.

²²Winslow, Meetinghouse Hill, 56, 59, 58.

usually lasted more than two hours. Since the point of Puritan worship and the special function of the sermon was spiritual instruction, Puritan ministers preached in the "Plain Style," selecting their words and examples to make the message immediately comprehensible to everyone in the congregation. These sermons were the primary cultural event and educational tool of the Puritan community.²³

Puritan worship was not totally democratic. As in England, seats were assigned according to status, with special attention paid to age, wealth, and "whatever else tends to make a man respectable."²⁴ But Puritanism emphasized the equality of souls before God. Even the humblest church member was an equal participant in the covenant; even the most respected endured the discomfort of a dark, unheated meetinghouse.²⁵ Like the Church of England services, the Puritan worship service defined and affirmed the community, but the community it represented was a gathered one, in which the spiritual and the social orders were at least partially separated.

The development of religious institutions in Virginia followed a more traditional path. From the beginning colonists assumed that the Church of England would be established in Virginia just as it was in the mother

²³Winslow, Meetinghouse Hill, 50-51, 91, 110-111, 91-92.

²⁴Winslow, Meetinghouse Hill, 142.

²⁵Winslow, Meetinghouse Hill, 27, 57.

country. Church attendance was required, first by custom, then by military order, and finally by laws passed by a representative government. At Jamestown, under the rule of Sir Thomas Gates, an absentee was to be punished with the loss of one week's provisions. A second offense would elicit a whipping, and any colonist who missed church three times would be executed. There is no indication that such drastic punishment was ever employed.²⁶

In the 1620s, when members of the General Assembly passed a law requiring church attendance, they established a more lenient penalty. A single absence was punishable by a fine of one pound of tobacco. If a person neglected to attend services for an entire month the fine increased to fifty pounds of tobacco.²⁷ The General Assembly amended this law several times during the remainder of the seventeenth century, but its basic provisions remained in effect until the turn of the century.²⁸

In 1689 Parliament passed the Toleration Act, exempting Protestant dissenters from penalties for not attending the Church of England services. The act was not binding in Virginia and was never adopted there, but it influenced subsequent legislation passed by the General

²⁶Brydon, Virginia's Mother Church, 1:6. Solberg, Redeem the Time, 87-89.

²⁷Hening, Statutes at Large, 1:123. Solberg, Redeem the Time, 90-93, 101.

²⁸For a summary of the changes see Solberg, Redeem the Time, 90-93, 101.

Assembly. In 1699 the General Assembly voted to reduce the church attendance requirement to one service every two months and to allow Protestant dissenters to fulfill the requirement by attending their own churches instead of the parish church.²⁹

In 1705 the General Assembly revised this measure to require attendance at one service a month. Once-a-month attendance remained mandatory throughout the colonial period, although after 1744 this requirement could be fulfilled by attending any church.³⁰

These church attendance laws must have represented ideals rather than realistic expectations. In colonial Virginia regular church attendance was just not practical, except in the few urban areas. Tobacco culture created a sparsely inhabited landscape; parishes had to be vast in order to include enough parishioners to support a pastor. Many poor colonists were unable to attend church because they lived too far from the church to walk there but owned no horse. Even for those who owned horses or a carriage, attendance at church was sometimes difficult. Inclement weather and bad roads could make the journey unpleasant. Those who owned slaves or had indentured servants often did not want them to leave the plantation, but they also were afraid to leave them unsupervised. Because pastors served

²⁹Brydon, Virginia's Mother Church, 2:370. Hening, Statutes at Large, 3: 170-171.

³⁰Hening, Statutes at Large, 3:360-361, 5:226.

more than one chapel, often the service at the closest church was conducted, not by an ordained minister, but by a lay reader or clerk. Under these conditions even the devout sometimes chose to spend Sunday at home.³¹

Hard evidence about how many people actually obeyed the church attendance laws is difficult to find. A survey conducted by the bishop of London in 1724 provides the only contemporary statistical data. Patricia Bonomi and Peter Eisenstadt used the pastors' responses to calculate that slightly more than half of white adult Virginians went to church on any given Sunday. Dell Upton came to the same conclusion based on architectural evidence. Using surviving pew assignment rosters, he calculated the maximum capacities of two colonial Anglican churches and found in both cases that only about fifty to sixty percent of the parish's adult white population would fit into the church at any one time. Apparently not everyone in colonial Virginia attended church services every Sunday, but it is more difficult to determine how many met the eighteenth-century requirement of attendance at one service a month.³²

³¹Brydon Virginia's Mother Church, 2:44. Solberg, Redeem the Time, 92. Upton, Holy Things and Profane, 188. Middleton, "Anglican Virginia," 149. Upton Holy Things and Profane, 189.

³²Patricia U. Bonomi and Peter R. Eisenstadt, "Church Adherence in the Eighteenth-Century British American Colonies," William and Mary Quarterly 39 (1985): 255-258. Upton, Holy Things and Profane, 187-188.

Obviously, the church attendance laws were not always diligently enforced; if they had been the legal system would have been deluged with offenders. Nonetheless, some people were prosecuted for missing church services. In seventeenth-century Virginia, churchwardens bore the responsibility for presenting to the proper authorities those who broke the law requiring church attendance. At first the colonial governor was the final authority in such cases, but once a system of county courts was in place, churchwardens began to present moral offenders to the county court. No system of ecclesiastical courts ever developed in Virginia despite the efforts of Commissary James Blair in the 1690s. The members of the House of Burgesses preferred to leave the responsibility for enforcing moral laws with civil authorities, and they quietly ignored Blair's proposal.³³

The appointment of churchwardens to watch over the morals of the congregation was a direct English inheritance, but Virginians substantially revised other institutions of English church government to suit their new environment. English vestries had traditionally been open; any adult male could participate in their yearly meetings and vote in the election of churchwardens. The same system was not practical in Virginia, where large parishes and dispersed population made it difficult for all the men of a

³³Middleton, "Anglican Virginia," 148. Brydon Virginia's Mother Church, 1:95, 1:83, 1:285-286.

parish to meet regularly. Instead the General Assembly directed that "twelve of the most able men of each parish be by the major part of the said parish, chosen to be vestry-men out of which number the minister and vestry to make choice of two churchwardens yearly as alsoe, in the case of death of any vestryman or his departure out of the parish, that the said minister and vestry make choice of another to supply his roome . . ." ³⁴

In Virginia the vestry became the backbone of the Anglican church. Its duties included far more than simply electing the churchwardens. The members maintained and furnished the church buildings, chose the parson, collected the tithes, monitored the morality of the congregation, regularly marked property boundaries within the parish, paid the pastor and other salaried officials, and distributed charity to the needy. They provided continuous leadership for the churches even when pastors came and went, or could not be found at all. ³⁵

The result was that power in a church came to rest with its vestry, which was typically "composed largely of the foremost planters, the leading lawyers and physicians, and well-educated younger sons of prominent families." In such families, positions on the vestry often became almost

³⁴Middleton, "Anglican Virginia," 29-31. Hening, Statutes at Large, 2: 44-45.

³⁵Middleton, "Anglican Virginia," 33-34. Brydon, Virginia's Mother Church, 1:94.

hereditary, passing down through three or more generations.³⁶ Serving on the vestry was a form of offering hospitality, which was an important social obligation of upper-class Virginians. Vestrymen offered their time, and often money, to care for the needs of the church and its parishioners. In return they received deference from other members of the congregation. Such bargains were familiar in colonial Virginia, where political candidates were expected to provide ample refreshments on election day as a means of wooing voters. In fact, many young vestrymen went on to political careers; service on the vestry was good training for higher elective offices.³⁷

The appearance, as well as the governance, of a Virginia Anglican church was shaped by the vestry. Since the construction of a new church was paid for through tithes, all parishioners had a right to expect their opinions to be heard, but the vestrymen made the final decisions about when and where to build and who would do the building. Unlike New England meetinghouses, Virginia churches were constructed by undertakers, professional builders who might live outside the community, and who submitted bids for the contract. The rank-and-file

³⁶Middleton, "Anglican Virginia," 33.

³⁷Upton, Holy Things and Profane, 165-169.

congregation helped finance the new church, but they did not help build it.³⁸

The finished church was a distinct architectural form, similar in many ways to other Virginia buildings, but with elements that marked it as a place apart. "Whether by their size, material, context, or cost, the church and its contents were strikingly different from the buildings most Virginians knew. Many of the church's components were beyond the financial means of ordinary people; others incorporated centuries-old signs of honor and high status."³⁹ The small brick or frame churches of Virginia might seem plain to anyone who had ever seen an English cathedral, but they were much larger and finer than the homes of almost all of the parishioners. Only the gentry could afford to live in houses as large and well built as the church.⁴⁰

Certain architectural conventions helped identify the building as a church. Rounded elements like arches, compass ceilings and roundheaded windows came out of the same architectural tradition as domed and vaulted ceilings; these rounded elements were intended as symbolic representations of the sky. The frequent use of pedimented doorways also had a long architectural lineage; derived

³⁸Upton, Holy Things and Profane, 11-19.

³⁹Upton, Holy Things and Profane, 158.

⁴⁰Middleton, "Anglican Virginia," 83. Upton Holy Things and Profane, 110-111.

originally from Roman triumphal arches, these doorways had been incorporated into the medieval tradition of gateway symbolism. Most eighteenth-century Virginians could not have known the architectural context of these elements, but they did recognize them as dignified and dignifying elements, which underlined the importance of the church building.⁴¹

The interior of the church was also impressive. The vestrymen bore the responsibility for obtaining the necessary furnishings and ornaments, and their choices often resembled the furnishings of their own homes. Altarpieces, pulpits, and chests were often decorated with japanning or gilding, a luxury affordable only to the upper class. The vestry ordered the church Bible and prayer books from England and often these too were elaborately decorated and gilded.⁴²

The required church linens, like any fine textiles in the eighteenth century, represented luxury and expense. The practice of covering the communion table with a silk cloth, which in turn was covered with linen when the table was being used, duplicated contemporary upper-class dining customs. The communion plate continued the analogy to upper-class dining. Until the late seventeenth century there had been no difference in the design of church plate

⁴¹Upton, Holy Things and Profane, 114-118.

⁴²Upton, Holy Things and Profane, 142.

and domestic tableware, and in the eighteenth century church plate continued to be described with domestic terms like cup, bowl, platter, and even tankard. The church displayed its communion plate on the communion table, much as the gentry displayed their silver in their own homes.⁴³

Church plate frequently followed the contemporary style, since it was selected by men who were accustomed to displaying their wealth by owning fashionable items. "In silver, more than in almost any other artifact before the middle of the eighteenth century, modish appearance was desirable as a sign of continuing economic power."⁴⁴ The economically powerful not only chose the church ornaments, they often provided them. They donated bells, Bibles, linens, altarpieces, fonts, and especially communion plate, and they expected recognition for these gifts. Often they ensured proper acknowledgement by having their names engraved on the pieces they wished to donate. The church was filled with furnishings associated with members of the upper class, provided by them, and often marked with their names. "Whose house is this?" Dell Upton asks pointedly.⁴⁵

The resemblance of the church to an upper-class home reflected and perpetuated a mental equation of "the universal values of the Church with the specific values of

⁴³Upton, Holy Things and Profane, 151-152, 154, 156-157, 153.

⁴⁴Upton, Holy Things and Profane, 157.

⁴⁵Upton, Holy Things and Profane, 170-171.

the gentry. The ideal order and the existing social order were one."⁴⁶ This equation was also reflected in the rituals of church attendance. Because the population of Virginia was relatively dispersed and the parish community gathered infrequently except at church, the Sunday church service took on a special social importance. People arrived early to stand or sit in the churchyard and chat with their neighbors. They provided a captive audience for the gentry who made a show of their arrival on horseback. Many parishioners posted legal notices on the church doors or advertised merchandise there. Some churchyards included stocks, where wayward parish residents were publicly corrected before the service.⁴⁷

As the time of the service drew near, the common people began to enter the church and take their places. The gentlemen waited in the churchyard until everyone else was seated, and then conspicuously walked as a body to their privileged pews.⁴⁸

The vestry made decisions about pew assignments and took class, occupation, sex, and age into consideration in determining where a person should sit. Although ideas about which seats were most desirable varied from church to church, it was standard for Anglican churches to have seats

⁴⁶Upton, Holy Things and Profane, 160.

⁴⁷Brydon, Virginia's Mother Church, 1:81. Upton, Holy Things and Profane, 203-205.

⁴⁸Upton, Holy Things and Profane, 205.

whose size, comfort, appearance and location reflected the social importance of their occupants. As the eighteenth century wore on, the distinctions became increasingly pronounced in many churches, and some members of the gentry began to pay to have private galleries or private hanging pews built for their families.⁴⁹

Of course, the most prominent position in the church belonged to the pastor. His pulpit was covered by a "type" or canopy, a symbolic representation of importance related to the pediment on the covered speaker's chair at the House of Burgesses and the canopy above the governor's pew. From this pulpit, the pastor led the service. It was liturgical, rather than sermon-centered, and the parishioners listened to the same invocations and repeated the same responses throughout their church-going lives. Repetition alone helped inculcate the timelessness and propriety of the established order, and the content of the liturgy drove the point home: "The appointed set of words, read in the midst of a community ranged in order of precedence, continuously evoked postures of deference and submission. Liturgy and church plan thus readily combined to offer a powerful representation of a structured, hierarchical community."⁵⁰

⁴⁹Upton, Holy Things and Profane, 177-182, 222.

⁵⁰Upton, Holy Things and Profane, 135-137. Isaac, Transformation of Virginia, 63-64.

Virginia was certainly not the only place where church and community were explicitly linked in the eighteenth century. In England and in all her colonies, churches, whether established or dissenting, were social institutions, as much as or more than they were religious institutions. Church and society were still so closely intertwined that attendance at a church service was synonymous with recognizing and accepting the existing order.

Understandings of that order were changing in the seventeenth and eighteenth centuries. With the growth of dissent in England and the proliferation of denominations in the English colonies, it became less and less possible for one church to serve as mirror and symbol of the whole society. Dissenting groups such as the Puritans began to see the spiritual order as distinct from the social order. They tried to draw the two together by modelling a new social order on the spiritual order, but even to attempt this required an implicit recognition that the two were separable.

This distinction between the spiritual order and the social order reached Virginia relatively late. Throughout most of the colonial period the colony was homogeneously Anglican. But by the mid-eighteenth century more and more Virginians were leaving the established church for dissenting denominations, whose doctrines, meetinghouses,

and rituals emphasized the equality of all people before God.⁵¹

In Virginia, to a greater extent than in either England or New England, the appearance, governance, and rituals of the established church reinforced the position of the local elite. Members of the elite had reason to interpret the rise of dissent -- and the consequent diminished influence of the Anglican church -- as a challenge to their own status and power.

Unlike England, Virginia had no ecclesiastical courts. Unlike the Puritan churches of New England, Virginia's Anglican churches had no internal procedures for disciplining church members who failed to attend services. The only prosecution for not attending church was through the county courts; those courts were dominated by elite Virginians who had a vested interest in preserving the dominance of the Anglican church.

The gentry of Virginia had the unique combination of a strong motive for preserving the dominance of the established church and the opportunity to use their political power to influence the way church attendance was enforced. They might be expected to use the system of punishments for not attending church to single out dissenters, potential dissenters, and people perceived as threats to the social order.

⁵¹Upton, Holy Things and Profane, 190-193.

But did they? An examination of the process of grand jury presentments for not attending church in York County, Virginia between 1750 and 1775 reveals little evidence that justices or jurors systematically singled out for presentment people who might be interpreted as threats to the social order.

CHAPTER II

THE PROCESS:

MAY 21, 1753

In order to evaluate the possible social messages underlying the York County presentments for not attending church it is necessary to understand how presentments were made. By tracing the legal proceedings surrounding the presentments of May 1753 we can investigate the process of grand jury presentments and the legal and social context in which the prosecutions took place.

The process of convening a grand jury began two months before the jury actually met. In March 1753 the justices ordered the county sheriff to call twenty-four of "the most capable freeholders" to serve on the grand jury.

By law the justices bore the responsibility for ensuring that a grand jury was summoned. The General Assembly required that grand juries be empaneled at both the May and November sessions of the county courts. By the mid-eighteenth century grand juries had replaced churchwardens as the primary moral arbiters of the community. As early as 1645, the Assembly required each

county court to summon a grand jury twice a year "to receive all presentments and informations, and to enquire of the breach of all penal laws and other crimes and misdemeanors."¹

Over the course of the next century the Assembly revised the law several times, and by the 1750s the system of grand jury presentments was firmly in place. On penalty of a fine of four hundred pounds of tobacco each, the justices of each county court were required to order grand juries summoned for the May and November court sessions every year. The sheriff summoned twenty-four freeholders to be jurors. If at least fifteen of those summoned appeared, a legal jury could be sworn.²

The grand jurors were responsible for presenting to the court all breaches of the colony's penal laws which had been committed within the last twelve months.³ In order for the jury to present someone for an offense, at least two jurors had to know about the transgression. The jury could also make a presentment based on information that

¹Hening, Statutes at Large, 1:304.

²Hening, Statutes at Large, 5:523. For a description of the changes in the grand jury system throughout the colonial period see Arthur P. Scott, Criminal Law in Colonial Virginia (Chicago: University of Chicago Press, 1930), 67-68.

³Hening, Statutes at Large, 5:523. Since grand juries were required to meet every six months, theoretically the same offense could be included among the presentments of two consecutive grand juries. There is no evidence that this ever happened in York County.

another member of the community brought to them. In such cases, the name of the informer had to be recorded in the presentment. In some areas, churchwardens often presented the grand jury with information about parishioners guilty of bastardy.⁴

The presentments made by a grand jury were likely to be shaped by the background, attitude, and biases of the individual jurors. The lives and actions of thirteen of the twenty-two York County men who served on the grand jury in May 1753 can be traced through other records of the county court.⁵

The foreman of the group was forty-three-year-old Thomas Roberts, a planter who would have a sizeable personal estate worth a little over six hundred pounds when he died in 1787.⁶ Roberts was no stranger to the workings of the county court. He had served on petit juries at

⁴Hening, Statutes at Large, 5:523-526. Lawrence George Herman, "Presentments of the Grand Jury of Northumberland County, Virginia, 1744-1770," Master's thesis, The College of William and Mary, 1976, 18.

⁵Each of the other nine men shared his name with at least one other man living in York County at the same time; their activities are impossible to separate. Any biographical information in this paper which is not specifically cited to another source is drawn from the York County court records as indexed in the York County Records Project at Colonial Williamsburg. See appendix: "Biographical Information."

⁶Because of the 1787 date, this value is stated directly from the court records. All other inventory values in this paper were recorded before 1775 and have been converted to constant (1700) pounds using a price index, 1660-1774. See appendix: "Inventory Values." 600 pounds in 1774 was equivalent to about 400 constant pounds.

twenty-five different monthly meetings of the court over a fourteen-year period. He had also served on at least eighteen grand juries, beginning when he was twenty-six years old. On May 21, he was serving for the eighth time as foreman.⁷

The ages of the men he worked with are difficult to determine. William Sheldon Sclater was twenty-nine. John Crawley may have been as young as twenty-one, but Ellyson Armistead must have been at least forty-six. Judging from the years in which they first became active in the courts (meaning they had at least reached legal majority), most of the jurors seem to have been between twenty-three and forty.

Four of the men were planters. Matthew Burt was a chairmaker and wheelwright, and also owned about sixty-five acres of land. John Richardson was a carpenter and builder and, at least briefly, a tavernkeeper. The other jurors left no clues to their occupation.

Almost all of the men whose biographies are known had some previous experience in the affairs of county government. Several had served as constable, sheriff, or undersheriff, or as a surveyor of the highways. Two had been justices of the peace.⁸

⁷This is Thomas³ Roberts.

⁸The two were Edward³ Tabb and Ellyson Armistead. Since justices were appointed for life, Tabb and Armistead must have resigned their offices at some point. As justices,
(continued...)

Four had never served on a petit jury, but Edward Potter had done so at least forty-six times. Most of his fellow jurors were more moderate in their government service; of the twelve whose petit jury services are known, six had served between one and fifteen times. Four of the men were serving on a grand jury for the first time. Seven had already served between one and five times. Only Edward Tabb had ever been the foreman of a grand jury.

It is impossible to know exactly how wealthy these men were in 1753, but inventories give us an idea of the status they would achieve by the ends of their lives. Eight of the jurors died in York County and had their estates inventoried and recorded by the court. The value of these estates ranged from about 300 pounds to just over 1100 pounds "current money". Five of the eight men had estates valued between 295 and 540 pounds.⁹

⁸(...continued)
they would be ineligible to serve as grand jurors. References to Tabb as a justice begin in the records for 1745 and end in 1751. Armistead was serving as a justice as early as 1738, but in January of 1753 was described clearly in the records as a "late justice of this county."

⁹These values represent a higher-than-average amount of wealth, but are not extremely high. Darrett and Anita Rutman used a clustering procedure to identify five different natural groupings of inventory valuations in Middlesex County, 1720-1750. None of the York County grand jurors would have fallen into the lowest two of the Rutmans' groupings which accounted for about 65% of the Middlesex inventories. Neither would any have fallen into the highest of the groupings which began at a little over 1340 constant pounds and included 2.7% of the Middlesex inventories. Darrett B. Rutman and Anita Rutman, A Place in Time: Explicatus (New York: W. W. Norton and Company, 1984), 129.

These men -- young-to-middle-aged, well-off, and experienced in the ways of county government -- initiated the prosecution of twenty-four church absentees and six other offenders. They pooled knowledge about their neighbors, made a list, and delivered it to the justices. Then they left.

From that point on the law put the responsibility for prosecution on the justices of the county court. They were empowered to summon the accused for trial at the next court session, where the justices would decide each case. The General Assembly authorized justices to impose fines of up to five pounds Virginia currency or one thousand pounds of tobacco without the formality of a jury trial. If the accused ignored the summons, the justices could try them in absentia.¹⁰

In fact, it took more than one court session to resolve the presentments made in May 1753. Immediately after dismissing the grand jury, the justices instructed the sheriff to summon the accused "to appear at the next court to answer to those things of which they are presented respectively." Few of the accused bothered to do so. By the June court date Edward Mason had dutifully paid his fine for absenting himself from church. Possibly John Tenham and three of those accused of not attending church presented acceptable defenses; the justices dismissed the

¹⁰Hening, Statutes at Large, 5:523-526.

charges against each of them "for reasons appearing to the court" with no further explanation.¹¹

When the accused failed to appear, the justices postponed some of the cases. They ordered the sheriff to summon Sarah Bratenham and William Willcox again, to appear at the next court. At that point they dismissed the bastardy charge against Bratenham, but had Willcox summoned yet again. When he did not appear at the September court, they found him guilty of unlawful gaming and levied a fine of five pounds. John Wormley also managed to postpone a decision in his case. He received a continuance until the July court, where he asked for permission not to plead until August. His case was not actually decided until September, when a jury found him guilty and imposed the same fine that Willcox had received.¹²

For most of the accused, justice was swifter and simpler. The justices' decisions run monotonously down the pages of the order book:

John Hunt who stands presented by the grand jury for absenting himself from his parish church being duly summoned to gainsay the said presentment and not appearing, though solemnly called, therefore it is considered that for the said offence he forfeit and pay to the

¹¹York County Judgments and Orders: 1752-1754, 2:252, 247.

¹²York County Judgments and Orders: 1752-1754, 2: 247, 275, 276, 290, 306-307.

churchwardens of Charles Parish 5 shillings or 50 lbs. of tobacco to the use of the poor of the said parish and that he pay the costs of this prosecution...

Robert Brodie who stands presented by the grand jury...being duly summoned and not appearing though solemnly called...it is considered for the said offense he forfeit and pay to the churchwardens of York Hampton Parish 5 shillings or 50 lbs. of tobacco to the use of the poor...

And so on. Twenty of the twenty-four people accused of missing church, plus "common swearer" William Stanup, were assigned punishments this way when they failed to appear at the June court.¹³ It is impossible to know whether these fines were ever collected; John Hunt, Robert Brodie, and their fellow offenders disappear from the records of the court at this point.

The events of the May 1753 court session make plain the shared role of grand jury and justices in enforcing church attendance. Even if they tried, members of the gentry could not force attendance at Anglican services only through their dominance of the vestry and the county court. Justices had the power to dismiss cases involving failure to attend church, but only grand juries could initiate legal action. The attitudes and anxieties of both groups

¹³York County Judgments and Orders: 1752-1754, 2: 247-252.

had the potential to influence the strictness with which church attendance laws were enforced.

Historians such as Rhys Isaac have argued that the county court sessions were essentially symbolic events. There the law of the community and the structure of society were made concrete. In an oral culture whose law was built on custom, the formal and formulaic actions of the court -- the swearing of oaths, the "proving" of documents, the judgments rendered in unvarying phrases with fines in unvarying amounts -- became the law itself. Participation in the county court was, for most, "the primary mode of comprehending the organization of authority."¹⁴

This authority was hierarchical. It flowed from the king, whose arms appeared prominently on the walls of the courthouse and whose name was invoked throughout the proceedings. More immediately, it rested with the justices, the foremost gentlemen of the county. In court, civic prominence reinforced their social and economic status. Seated high on a raised platform, facing their standing neighbors, the gentry of the county represented the rule of the king of England and the authority of the laws of Britain and Virginia. Like the church service, the rituals of court day reiterated the propriety of the existing social order.¹⁵

¹⁴Isaac, Transformation of Virginia, 88-94, 93.

¹⁵Isaac, Transformation of Virginia, 94. For a description
(continued...)

But the county courts were more than merely symbolic rituals of community. They were practical institutions of local government. The defendant in a debt case was not concerned with the way in which his case affected his neighbors' perceptions of law and authority. The decision of the court affected him immediately. He stood to lose money -- maybe only a small amount, perhaps enough to have a significant impact on his life and livelihood. In a society where property and landholdings were of utmost importance and where debt and credit were pervasive economic realities, a body which effectively resolved landholding disputes and debt cases was a very real and tangible presence.¹⁶

For the court to operate smoothly, it required a multitude of officials and an effective bureaucracy. Justices might only sit in court for one or two days out of every month, but the clerk of the court spent considerably more time issuing writs and preparing the docket. Sheriffs delivered summonses to defendants and to potential jurors. Various appointed committees evaluated estates between court sessions. The surveyors of the highway had a constant responsibility to make sure the roads were maintained. By showing the extent to which small planters

¹⁵(...continued)
of the courtroom, see Upton, Holy Things and Profane, 205-206.

¹⁶A point made by Rhys Isaac himself: Transformation of Virginia, 90, 93.

influenced the court through these lesser offices, D. Alan Williams and David Konig provide an alternative to the picture of court day as a gentry-dominated pageant.¹⁷

Gentry leadership and ritual deference to gentry leaders were characteristic of eighteenth-century court days, but leadership is not always the same as control, and an overemphasis on deference obscures the real impact that non-gentry had on the court. In addition to clerks and bailiffs, by mid-century, sheriffs and constables, tobacco inspectors and road surveyors, processioners, committees to inventory estates, grand and petit jurors were needed to keep the work of the court moving smoothly. Preparations began days before the court convened, and routine paperwork continued for days after. Most of this work was drudgery carried out by lesser officeholders. They held positions which lacked prestige and received only moderate pay. Members of the gentry and large planters found such positions unappealing.¹⁸

Small planters and freeholders, on the other hand, wanted these lesser positions. The fees associated with

¹⁷D. Alan Williams, "The Small Farmer in Eighteenth-Century Virginia Politics," Agricultural History 43 (1969): 91-101. David Thomas Konig, "The Williamsburg Courthouse: A Research Report and Interpretive Guide" (Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, VA, 1987, Typescript). Cited with permission of the author.

¹⁸Konig, "The Williamsburg Courthouse," 31-33, 36. Cited with permission of the author. Williams "The Small Farmer," 96.

some offices looked more attractive to small farmers than to gentlemen. Appointment as tobacco inspector, an especially lucrative position, could be invaluable to a farmer trying to accumulate capital to move up the social ladder. Small farmers were also more likely than gentlemen planters to be intensely interested in very local affairs such as the condition of particular roads and the correct marking of property boundaries. While the gentry concentrated on colony-wide issues and their prestigious positions as leaders of the local courts, they appointed smaller landholders to the lesser offices and allowed them to control most of the day-to-day administrative tasks. These small landholders became "quasi-officials -- technically laymen, but such frequent participants that they had a considerable influence on the workings of the system."¹⁹

Through these local offices, many planters advanced to positions of steadily increasing responsibility and prestige. A freeholder who obtained a position as a road surveyor might advance to marking property boundaries and soon be called to serve on a petit jury. The culmination of this hierarchy of local positions was a summons to serve

¹⁹Williams, "The Small Farmer," 96-97, 99. Williams defines the gentry as roughly the top 10% of the population, with land and property values exceeding one thousand pounds. Small farmers, by contrast had personal property, including landholdings of fifty to five hundred acres, worth two hundred to two hundred and fifty pounds. 92. Konig, "The Williamsburg Courthouse," 163-164. Cited with permission of the author.

on a grand jury. Few freeholders and small farmers were able to progress beyond that level of public authority.²⁰

Few gentlemen were forced to start so low. Generally their public service began with membership in the vestry, where they gained the political experience that would allow them to go on to be justices of the peace and possibly hold colony-wide offices. Like the small farmers, young members of the gentry faced a career ladder composed of jobs of increasing responsibility. But the two ladders were separate, with little chance of moving from the top rung of the lesser to the lowest rung of the greater.²¹

Virginia grand jurors were often "the most capable freeholders," those who lacked the wealth or social prestige of the gentry but had proved themselves in a number of local offices. They were "quasi-officials" and often were experienced at their role as grand jurors, since many men served repeatedly on the grand jury. Like positions in the vestry or seats on the county court, service on the grand jury often passed within families. A small farmer who served regularly on the grand jury might expect his son or his nephew to follow in his footsteps one day.²²

²⁰Williams, "The Small Farmer," 97-98.

²¹Williams, "The Small Farmer," 97-98.

²²Williams, "The Small Farmer," 98.

Repetitive service and hereditary positions were not inevitable features of a colonial grand jury. In Maryland in the late seventeenth and early eighteenth centuries, local government allowed more widespread participation. Between 1696 and 1709 most of the landowners in Prince George's County served on the grand jury at least once. No difference in wealth or status differentiated the men who served more than five times from their neighbors who served less often. Several minor officials eventually worked their way up to positions as justices on the county court.²³

In contrast to Prince George's County, eighteenth-century York County followed the pattern described for the rest of Virginia. Between 1699 and 1780 only about a quarter of Williamsburg and Yorktown justices also served on grand juries. Many began their careers as officers in the military or as vestrymen. Their appointments to the bench depended more on family connections than on training

²³Lois Green Carr, County Government in Maryland, 1689-1709, American Legal and Constitutional History; A Garland Series of Outstanding Dissertations, vol. 1 (New York: Garland Publishing, Inc., 1987), 655-660. Prince George's County during this period may exhibit a pattern that was characteristic of the early eighteenth century, or of the frontier. Carr suggests that public officeholding may have become less democratic as the population increased (660). In York County the gentry-dominated "oligarchic bench" did not appear until about 1700. Perhaps the two separate hierarchies of public office also developed in York County around the turn of the century. Cathleene B. Hellier, "'The Bigwigs:' The County Court of York County, Virginia 1700-05" (Williamsburg, VA: Department of Historical Research, Colonial Williamsburg Foundation, 1984, Typescript), 13.

or experience. At mid-century half of York County justices were sons of former justices, but only three over the course of the century studied law formally in England.²⁴

Lesser officeholders were more closely associated with the grand juries. Almost half of the deputy sheriffs, constables, and surveyors of the roads served as grand jurors. Only about ten percent of these men managed to advance from their lesser offices to the position of justice. Most were craftsmen or involved in service jobs like tavernkeeping. They typically owned "middling" amounts of personal property, notably less than the merchants and planters who served as justices.²⁵

York County grand jurors, like those from other counties in Virginia, often served repeatedly. Lists of the members of thirty-five York County grand juries survive from the third quarter of the eighteenth century.²⁶ A total of 627 positions on grand juries were filled during that time, but only about two hundred men served as grand

²⁴Linda H. Rowe, "Peopling the Power Structure: Urban Oriented Officeholders in York County, Virginia 1699-1780" (Master's thesis, The College of William and Mary, 1989), 21. Note that this study considers only those York County officeholders who had urban residence or economic ties to one of the cities. Konig, "The Williamsburg Courthouse," 111-112. Cited with permission of the author.

²⁵Rowe, "Peopling the Power Structure," 30, 45, 49.

²⁶The court records from 1755-1758 have not survived. Grand jury lists and presentments for Nov. 1754, Nov. 1765, May 1766, Nov. 1768, Nov. 1769, May 1773, May 1774, May 1775 and Nov. 1775 are not included in the extant records. Grand juries may not have met during those months.

jurors.²⁷ Fifty-five men served only once, meaning that 572 places on grand juries were filled by about 150 men serving repeatedly. York County grand juries were not made up of random samples of freeholders but drew many members from a core group of experienced jurors.

The motives of these experienced grand jurors remain cloudy. Unlike the grand jurors of Prince George's County, they seldom made presentments based on the knowledge of other officeholders, or of the justices.²⁸ Instead, they almost always presented people based on their own knowledge. Presumably their presentments represented their own ideas about how important it was to enforce the different laws.

How important was it to them to enforce participation in the established church? Did they identify enough with the existing social order to value the established Anglican church as a bulwark of that order? Did they present people for not attending church in response to perceived threats to the social order?

²⁷It is impossible to discover the exact figure because several of the names which appear repeatedly on jury rosters were shared by more than one person. If we assume that only one person with each common name served on the grand juries, we arrive at a minimum estimate of 166 different jurors. Assuming that each common name on the jury rosters represents two different individuals serving at different times we arrive at a high estimate of 201 different people.

²⁸Carr, County Government in Maryland, 228.

One way to answer these questions is to look at the people whom the grand juries presented. Were they people who might be considered threats to the social order?

The twenty-four people presented at the May 1753 court session for not attending church were a mixed group. Some certainly may have been viewed by their neighbors as troublemakers, or even simply as oddballs. John Coman persistently stayed away from Sunday services. He must have been conspicuous in his absence because at least eight different grand juries included him in their lists of presentments. Mary Evans was conspicuously different as a woman living apart from her husband. She had taken him to court in the spring of 1733 to force him to provide for her maintenance, but her suit was dismissed. Five years later she was back before the court, which recognized her right to the property she acquired herself in lieu of a fixed maintenance from John Evans. The justices guaranteed that her property would not be seized to pay her husband's debts.

May 1753 was the first of three court sessions at which Robert Wise was presented for not attending church.²⁹ Many other men were presented multiple times, but something about Wise must have particularly disturbed the justices. In 1768 the court took the drastic step of ordering his daughters to be placed in foster homes, "he neglecting to

²⁹This was Robert¹ Wise.

educate and instruct them in the principles of Christianity."

On the other hand, several of the people presented seem to have been respected members of the community. Gerard Roberts Sr. and his son Samuel Roberts had both previously served on grand juries.³⁰ Gerard Roberts had at one time been a churchwarden in Charles Parish; in May of 1735 he brought the grand jury information about a woman accused of bastardy. James Mitchell had a long career as an ordinary keeper in Yorktown. The court session on May 21, 1753 was the only time he was ever accused of not attending church. When he died nineteen years later at the age of sixty-eight his obituary described him as "a man who was as generally esteemed as any in the colony."³¹

The variety evident in these examples precludes easy generalizations about people presented for not attending their parish churches. A few may have been considered troublemakers, disruptive to the social order. Others give every indication of having lived otherwise inoffensive lives. Some were community leaders. In order to answer questions about grand jurors' motivations, we must look beyond the example of the court session in May 1753 and consider all of the grand jury presentments made in the third quarter of the eighteenth century.

³⁰These were Gerrard¹ Roberts and Samuel² Roberts.

³¹The obituary appeared on page 3 of the January 30, 1772 (Purdie and Dixon) Virginia Gazette.

CHAPTER III

THE PEOPLE

Between the beginning of 1750 and the end of 1774, York County grand juries made at least 272 presentments for not attending the parish churches.¹ They cited 167

¹Probably there were more presentments made on the court days for which no records survive. During the same period there were 355 presentments related to tax violations : 293 for failing to properly list tithables on the parish tithable lists, 45 for failing to list taxable vehicles like riding chairs and coaches, and 17 for failing to list landholdings. The grand juries presented 38 people for failing to properly maintain the roads, bridges, landings, dams, or churchyards for which they were responsible. Five men were presented for not keeping overseers on their plantations; 13 were accused of illegally selling liquor. Jurors presented 5 people for assault and battery. Not attending church was the most common of the moral offenses. The juries made 54 presentments for bastardy, 3 for unlawful gaming and 3 for swearing.

These figures are roughly consistent with what is known about presentments elsewhere in Virginia. In Northumberland County between 1744 and 1770, failing to attend church was the most common offense, followed by swearing, bastardy, and failure to properly list tithes. In Richmond County between 1743 and 1776, presentments for tax violations and failure to perform public duties slightly outnumbered presentments for religious offenses. Herman, "Presentments of the Grand Jury of Northumberland County," 37, 48. Gwenda Morgan, The Hegemony of the Law: Richmond County, Virginia, 1692-1776 (New York: Garland Publishing, Inc., 1989), 189.

Earlier, between 1720 and 1750, failing to attend church was the most common presentment in four, and the second most common presentment in five, of the twelve

(continued...)

different individuals for this offense. In 153 cases the court fined the offenders. Four more people paid the appropriate fines before being officially tried and sentenced. The justices dismissed forty-five cases, and outcome is unknown for forty-seven cases. Finally, twenty-three people were acquitted on a technicality; the court had followed improper procedure in collecting the presentments.

The 167 York County residents presented for not attending church were a diverse lot. Among their ranks were former grand jurors and convicted thieves, free blacks and wealthy slaveowners, a Presbyterian man, an Anglican minister's widow, a dancing master, a surgeon, and five wigmakers. The group cannot be collectively labelled as poor or of low status, as heterodox or threatening. There is no evidence that the elite of the county systematically used presentments to rebuke neighbors who challenged the social hierarchy. In York County the process of grand jury presentments was more complicated.

Grand jury presentments in York County reflected the social implications of church attendance. Failure to attend church was typically a male offense: 153 of 167

¹(...continued)

counties included in Roeber's study. Overall, bastardy was the second most common offense. (This was before the 1761 law that charged grand jurors with examining the tithable lists, and presenting people for concealing tithables.) "Authority, Law, and Custom," 47.

offenders were men.² Of the fourteen women who were presented, only one is known to have been married at the time of her presentment. Nine were unmarried, separated, or widowed and the marital status of four is unknown.³ Jurors were selective in their presentments, singling out heads of household for prosecution. Their selectivity implies that they recognized failure to attend church as a civic offense rather than a purely moral transgression.

Among the York County presentees were a number of unusual and unsavory characters. Before, after, and in between their presentments for absence from church some offenders came before the court on other charges. Benjamin Flowers and Samuel Richardson were each convicted of stealing bacon. Thomas Cox was sentenced to one year in jail for "endeavoring to raise a conspiracy and insurrection among the slaves of [York] County." The justices found enough evidence against Nathaniel Moreland to charge him with "corising and uttering false money;" they then sent the case to be tried in the General Court.⁴

²Male offenders outnumbered female offenders in Massachusetts but not to the same extent as in York County. Oberholzer found that 49 of 68 cases between 1750 and 1779 involved male offenders. Delinquent Saints, 253.

³The lone married woman, Mary Martin, would be widowed within three months of her presentment. The date of James Martin's will suggests that he may have been seriously ill by the time his wife was called into court.

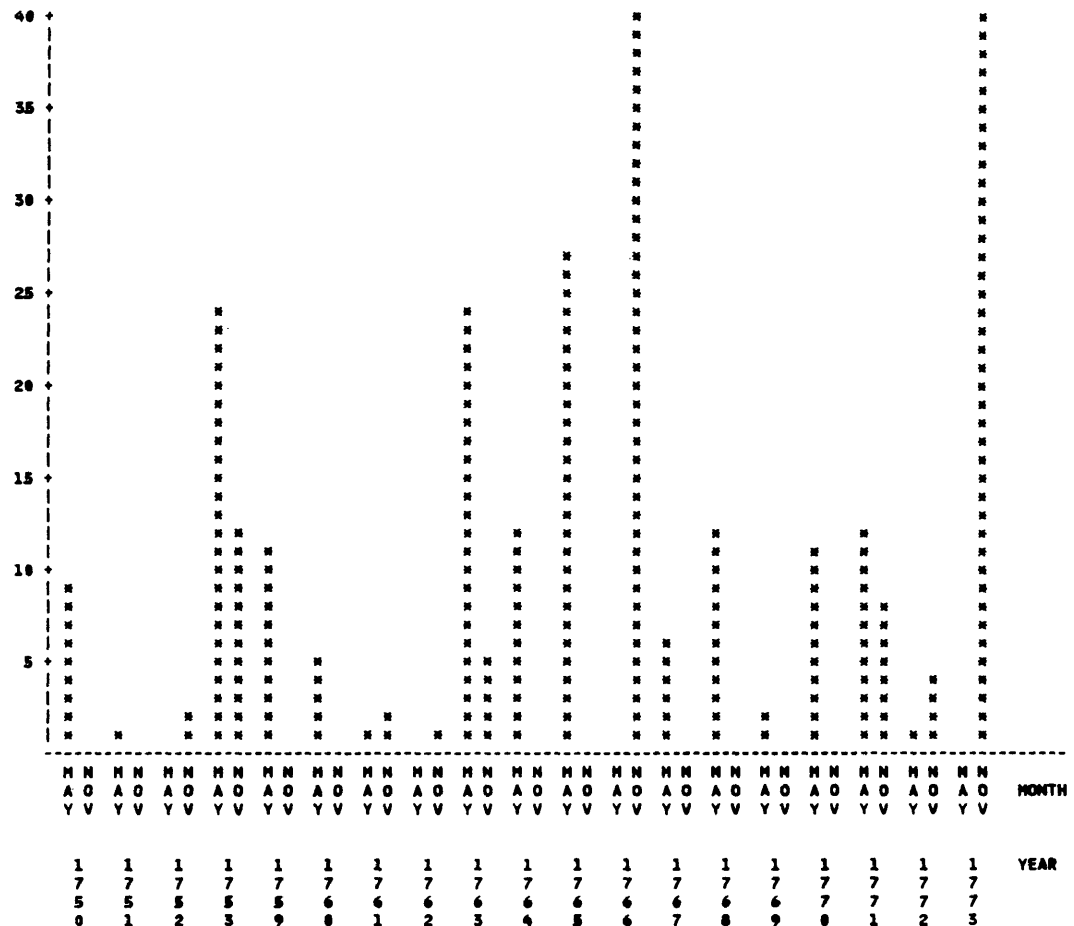
⁴York County Order Book: 1774-1784, 4: 95. York County Orders, Wills, and Inventories: 1740-1746, 19:182-183.

The most consistently disreputable behavior came from James Pride. Pride was three times presented for not attending church, once brought to court on charges of assault and battery, and once sent before the General Court to be tried for arson. In 1767 the justices of York County ordered James Pride to guarantee his peaceable behavior by offering three hundred pounds security; his wife Mary Pride had sworn before the court that she feared James would kill her.

Through theft, violence, and deceit, offenders like James Pride challenged the maintenance of order in York County. Other offenders defied social expectations in different ways. At least three of the fourteen women presented for not attending church were also presented for bastardy.⁵ Two other women were embroiled in notably unpleasant family conflicts. As we have seen, Mary Evans appeared before the court to have her separation from her husband legally recognized. Susannah and Francis Fontaine never aired their domestic disputes before the court, but the extended Fontaine family apparently despised Susannah. Family correspondence and a family history detail her alleged shortcomings. One hundred years after Francis and

⁵Possibly the number should be five. Because more than one Anne Cosby and more than one Mary Cosby lived in York County concurrently it is impossible to prove that the Anne and Mary presented for absence from church were the same Anne and Mary previously presented for bastardy; however, this seems likely. In each of the five cases the bastardy presentment was made before or at the same time as the presentment for not attending church.

GRAND JURY PRESENTMENTS FOR NOT ATTENDING CHURCH YORK COUNTY, VIRGINIA, 1750-1775



(There are no records of presentments for Nov. 1754 - Nov. 1759, Nov. 1765, May 1766, Nov. 1768, Nov. 1769, May 1773, May 1774, May 1775, and Nov. 1775.)

(Zero presentments were made in Nov. 1750, Nov. 1751, May 1752, May 1754, Nov. 1759, Nov. 1760, May 1762, Nov. 1764, Nov. 1767, Nov. 1770, and Nov. 1774.)

Susannah were dead their problems were still being discussed; in his history of the Anglican Church in Virginia, Bishop William Meade alluded to Francis Fontaine's "unfortunate" and injurious second marriage.⁶

A few of the male offenders also had notoriously unsatisfactory family situations. The court ordered the churchwardens of Charles Parish to find new homes for Robert Wise's daughters because Wise neglected to provide the children with a Christian education. John Elliot's children may have been taken away for similar reasons.⁷

Some of these individuals acted in ways that presented an obvious threat to the order of society. The actions of others posed more subtle challenges. Still others give no evidence of having ever acted in any way to question the social order; instead the potential for discontent and rebellion may be inferred from biographical details. Boaz Booth was too poor to pay his taxes. Samuel Richardson, Anthony Roberts, and John Howell were free blacks. Apparently Martha Brooks and Anne Cockett were at least semi-transient; the justices dismissed bastardy

⁶Edward P. Alexander, ed., The Journal of John Fontaine: An Irish Huguenot Son in Spain and Virginia 1710-1719 (Williamsburg, VA: The Colonial Williamsburg Foundation, 1972), 26. Meade, Old Churches, Ministers and Families of Virginia (Philadelphia: J. B. Lippincott and Co., 1857), 1:202.

⁷Again, the existence of two men with the same name makes it impossible to prove that the John Elliot accused of failure to "take due care in providing for and educating" his children was the same John Elliot who did not attend church. The Robert Wise mentioned is Robert1 Wise.

presentments against each of the women when she could not be located within York County. Both reappeared later.

Nothing is known about Robert Brodie or Joseph Brown aside from the fact that each was presented for not attending church. Several other offenders appear in the court records only rarely. Lack of participation in the all-important county court system suggests that these individuals may have been poor, transient, or living on the margins of society.

If all offenders were like those already described the subtext of grand jury presentments would be easy to discern: grand jurors presented for absence from church those individuals whom they perceived as threats or potential challenges to the social order. In fact, while there is ample evidence that individuals who threatened the social order often were prosecuted for not attending church, not every individual presented can be interpreted as a threat to the social order. Jane Vobe was a prominent tavernkeeper. Edward Potter served repeatedly as a grand juror. James Dixon was a churchwarden.⁸ Nothing in the court records indicates that these individuals challenged the social hierarchy, nor do their biographies give cause to perceive them as potential threats. Like many other offenders, they had positions of moderate to high status within the community.

⁸These were Edward² Potter and James² Dixon.

Identifying and quantifying an individual's status is difficult. Acquaintances intuitively weigh a person's power, wealth, and authority when evaluating that person's status. Historians must choose between a number of methods to concretely measure these attributes. Working with data from Middlesex County, Virginia, Darrett and Anita Rutman examined seven different variables: land, labor, personal estate, honorifics, highest military rank, highest occupation, and highest office held. They found moderately strong to strong relationships among all of these status indicators.⁹ An analysis based upon three of the variables -- occupation, wealth, and offices held -- reveals that York County grand jurors presented individuals of several different status levels for not attending church.

About one-fourth of the individuals presented for not attending church can be identified by occupation. Eighteen practiced a trade, twelve were planters, seven kept taverns, three were merchants and three professionals. Although it is difficult to describe precisely a status hierarchy of occupations, in general tradesmen ranked relatively low, merchants and professionals ranked relatively high, and tavernkeepers fell somewhere in between. A farmer might be of almost any status level, depending on his particular situation.¹⁰

⁹Rutman and Rutman, Explicatus, 138-139.

¹⁰Rutman and Rutman, Explicatus, 154-155. Jackson Turner
(continued...)

The number of offenders who are known to have been planters is small and the numbers of tradesmen and tavernkeepers relatively large.¹¹ However, it is likely that a majority of offenders whose occupations can not be identified were planters. Tradesmen and tavernkeepers can easily be identified; they sometimes advertised in the Virginia Gazette, and their customers documented their businesses in account books and journals. Planters less often left explicit evidence of their occupation.

It is possible, but not certain, that a disproportionate number of the people presented for absence from church were tradesmen. However, tradesmen were certainly not the only ones presented. The York County grand jurors cited individuals involved in a variety of occupations at a number of different status levels.

The outcome of cases was only marginally related to occupational status. All four presentments against

¹⁰(...continued)

Main, The Social Structure of Revolutionary America, (Princeton: Princeton University Press, 1965), 112, 90-91. See appendix: "Occupation" for an explanation of how occupations were determined and classified.

¹¹The number of tradesmen is particularly striking. More than 10% of all the York County offenders -- and more than 40% of those whose occupations are known -- practiced a trade. Historians' estimates of the number of tradesmen in the colonial population range between 7 and 25 percent of heads of household. Jean B. Russo, "Self-sufficiency and Local Exchange; Free Craftsmen in the Rural Chesapeake Economy," in Colonial Chesapeake Society, ed. Lois Green Carr, Philip D. Morgan, and Jean B. Russo (Chapel Hill: University of North Carolina Press, 1988), 423. Russo cites estimates by Edwin Perkins, Carl Bridenbaugh, and Jackson Turner Main.

merchants and all three against professionals resulted in convictions. About 90% of the presentments against planters and tavernkeepers and slightly less than 80% of the presentments against tradesmen led to convictions.¹² Considering the small number of cases, the slight differences in conviction rate should not be interpreted as proof that county justices were more likely to convict a professional than a tradesman. On the other hand, nothing suggests that justices were more likely to convict a tradesman. Justices did not discriminate against individuals of lower occupational status.

Neither did the justices discriminate against the poor. The possessions of sixteen offenders were enumerated in pre-Revolutionary estate inventories; their values ranged from seven pounds to nine hundred pounds current money.¹³ Individuals who owned goods worth hundreds of pounds were just as likely as their less wealthy neighbors to be convicted of not attending church.

The sixteen individuals for whom estate values are known were probably not representative. Estate evaluations seldom exist for the very poor; no one enumerates the scanty possessions of the indigent. Many of the York

¹²Presentments for which no outcome is known have been disregarded. Outcome could be determined for 21 presentments against planters, 9 against tavernkeepers, and 22 against tradesmen.

¹³The values are given in standard pounds. See appendix: "Inventory Values."

County offenders may have been poor. Only a handful were rich. Even so, the inventory values paint a picture of relative economic comfort. More than half of the York County offenders whose estates were inventoried died in possession of estates worth more than eighty-eight pounds. Less than thirty-five percent of the Middlesex County residents whose estates were inventoried owned as much.¹⁴ York County jurors presented the poor for not attending church, but they also presented the well-to-do.

In colonial Virginia, appointment to public office reflected a man's status in his community. When community leaders appointed a person to office, they demonstrated faith in his competence and responsibility. By the specific position they chose for him, local leaders effectively described the individual's position in the local status hierarchy. The highest office a man ever held was a good predictor of his status as measured by other markers. Men who held high offices owned more land and more slaves, had larger personal estates and higher military rank, and were dignified with more impressive titles of respect than their neighbors in lesser offices.¹⁵

In York County, grand jurors presented many officeholders for absence from church. Seven of the individuals presented for not attending church served as

¹⁴Rutman and Rutman, Explicatus, 129.

¹⁵Rutman and Rutman, Explicatus, 137-139.

vestrymen, churchwardens, or justices, or held some other high office. Another fifty held lesser offices; they served as jurors, constables, and surveyors of the highways. Altogether, almost half of the York County offenders served in public office at some point in their lives.¹⁶ Some offenders participated in the process of grand jury presentments from both sides; fifteen men presented by a grand jury between 1750 and 1775 also served on a grand jury during that period.

Most of the offenders who held office were accused of being absent from church after they had held their first public position.¹⁷ Grand jurors presented many current and former public officials; they did not single out those who had not yet been (or never would be) placed in positions of trust. Neither did the justices obviously discriminate against those who never held office. They convicted lesser officeholders and those who never held office at

¹⁶See appendix: "Officeholding" for a complete list of positions coded as higher offices and those coded as lesser offices. Seven offenders (6%) held high office, 50 (42%) held lesser office, and 62 (52%) never held office at all. (Female offenders were excluded from these calculations, as were the 34 men whose officeholding history can not be traced because of possible confusion with other men of the same name.)

¹⁷74% (57 of 77) of presentments involving men who held lesser office occurred after those men were appointed to office. About 83% (15 of 18) of the cases involving men who held higher office took place after those men were already serving in high level offices.

approximately the same rate.¹⁸ Once again, the overall picture suggests that neither jurors nor justices discriminated against individuals of low status.

In some counties, jurors and justices used the church attendance laws to harass dissenters. One early Baptist historian claimed that justices fined only Baptists who failed to attend church, ignoring the lapses of Anglicans. In the early 1770s grand jurors in Middlesex County presented several prominent Baptists for being absent from church.¹⁹ But Baptists were not the only ones grand jurors targeted. A Presbyterian minister wrote that in the 1740s some Hanover County Presbyterians were fined repeatedly for failure to attend church; one man was presented almost twenty times.²⁰

York County grand jurors never harassed dissenters in this manner. They may simply have lacked visible targets. York County had no organized Separate Baptist congregation, and local Presbyterians did not actively challenge the

¹⁸82% (58 of 71) of cases involving men who never held office, 79% (48 of 61) of cases involving men who held lesser office, and 94% (15 of 16) cases involving men who held higher office resulted in convictions. (The three cases in which the accused voluntarily paid the fine before being ordered to do so are counted as convictions. Cases involving women and cases for which the outcome is unknown have been disregarded.)

¹⁹Wesley M. Gewehr, The Great Awakening in Virginia, 1740-1790 (1930, reprint, Gloucester, MA: Peter Smith, 1965), 128. Gewehr cites William Fristoe's 1808 History of the Kettocton Baptist Association.

²⁰Brydon, Virginia's Mother Church, 2:159.

religious status quo. In 1765 a group of men politely informed the court that they intended to use a building on George Davenport's land as a Presbyterian meetinghouse. The authors of the petition intentionally distanced themselves from Presbyterians who challenged laws regulating dissenting churches and ministers; in a postscript they promised that "as we are not able to obtain a settled minister we intend this place at present only for occasional worship when we have opportunity to hear any legally qualified minister."²¹ Only one of the seventeen signers of the Presbyterian petition was ever presented to the court of York County for not attending his parish church. On May 21, 1770 the grand jury presented Walter Lenox for absence from church. One month later the justices of the county court dismissed the charge against Lenox without explanation.

In spite of the lack of vocal dissenting congregations in their own county, York County residents must have been aware of increased religious tensions in the colony as a whole. In the early 1770s Separate Baptist congregations were multiplying at a rate alarming to many Virginians. The Baptist movement was strongest west of the fall line, but residents of the Tidewater were well aware of the Baptist presence. At the Capitol building in Williamsburg members of the General Assembly considered petitions from

²¹York County Judgments and Orders: 1763-1765, 4:412.

Baptist congregations and debated new legislation regulating dissenting churches.²²

York County grand jurors did not respond in any consistent way to heightened religious tensions. The grand jury which met in November 1773 presented forty people for not attending church, the maximum number of people presented at any one time during the years between 1750 and 1775. However, the grand jury which met one year earlier had presented only four people for not attending church and the grand jury which met one year later failed to present anyone for this offense. There is no record that grand juries even met in May 1773 or May 1774.

The number of people presented for not attending church varied greatly from one court session to the next. At half the sessions between 1750 and 1775,²³ the grand juries presented only one or two people for not attending church, or did not present anyone at all for that offense. On the other hand, at almost one third of the sessions the jurors presented more than ten people for absence from church.

The variations in number of presentments do not follow any discernible pattern. Presentments did not consistently

²²Warren E. Billings, John E. Selby, and Thad W. Tate, Colonial Virginia: A History, A History of the American Colonies (White Plains, NY: KTO Press, 1986), 277-279, 323-324. Brydon, Virginia's Mother Church, 2:374-82.

²³Only sessions for which grand jury rosters and/or presentments survive are counted.

increase or decrease over the twenty-five year period. Neither was there any significant difference between the number of people presented at November court sessions and the number presented at May court sessions. High numbers of presentments in both 1753 and 1773 were isolated phenomena, contrasting with low numbers in the preceding and following years. The only perceptible trend came between 1763 and 1766, when there were several sessions with unusually high numbers of presentments.

The lack of a pattern in the York County presentments resembles what is known about presentments in other Virginia counties. Grand jurors in Northumberland and Richmond Counties were just as inconsistent as the York County jurors during the third quarter of the eighteenth century; they presented many people at some sessions and few or none at others.²⁴ The few indistinct trends that can be identified are different for each county,²⁵ suggesting that local events and attitudes influenced the jurors more than did colony-wide conditions.

²⁴See Herman, "Presentments of the Grand Jury of Northumberland County," 49, and Morgan, Hegemony of the Law, 13.

²⁵One possible exception is the jump in presentments during the 1760s which was evident in both York and Richmond Counties. Morgan's figures are given in five-year increments (e.g. 1761-65, 1766-1770), making it impossible to determine whether the increase in presentments in Richmond County during the 1760s came in the period 1763-66 when York County presentments suddenly jumped. Hegemony of the Law, 13.

During the third quarter of the eighteenth century a number of events took place in York County which might have affected people's attitudes toward church attendance. Local minister John Camm led Virginia's clergy in opposition to the Twopenny Act of 1758, a measure which effectively reduced ministers' salaries by allowing payment in currency rather than tobacco. Camm traveled to England to appeal to the Privy Council. In Virginia he sued the Yorkhampton vestry for the tobacco owed to him. The Virginia Assembly publicly supported the parish's vestry; and royal governor Francis Fauquier pointedly snubbed John Camm. For more than a year the Yorkhampton church was the center of bitter dispute.²⁶ Surely, the controversy colored the way Yorkhampton parishioners thought about their church and its services, but presentments for not attending church were not affected.

Neighboring Bruton Parish saw an equally heated altercation in the early 1770s. In July 1772 and again in June 1773, the vestry considered making Samuel Henley rector of the parish. Henley, formerly acting rector, seemed a logical choice, but was rejected on both occasions. Heated debate erupted over Henley's fitness to serve. Robert Carter Nicholas, treasurer of the House of Burgesses, accused Henley of heresy and termed him a deist. Others, including Speaker of the House Peyton Randolph,

²⁶Billings, Selby, and Tate, Colonial Virginia, 257-259.

supported Henley. Charges and countercharges were made. Henley commissioned friends to collect signatures of his supporters; Nicholas encouraged a local tradesman to collect names of opponents. Appeals, arguments and apologies appeared on the pages of the Virginia Gazette.²⁷

Faced with public doctrinal debate and an acrimonious division within their own church, did local residents change their attitudes toward church attendance? The answer is a cautious maybe. Presentments jumped sharply in November 1773, several months after the most intense period of the Henley controversy. However, there is no record of the grand jury which should have met at the height of the conflict in May 1773, or of a grand jury meeting in May 1774. The most likely explanation is that the county justices failed to ensure that juries met during those months, exhibiting a lack of enthusiasm which contrasts sharply with the high number of people presented in November 1773. Bitter religious controversy may have contributed to the one-session peak in presentments in 1773, but it is also possible that the timing was coincidental.²⁸

If local events did not drive the fluctuations in presentments, maybe local people did. Many York County

²⁷Isaac, Transformation of Virginia, 222-234.

²⁸The jump in presentments in November 1773 was not peculiar to Bruton Parish, but was consistent across all three parishes.

jurors served repeatedly. An individual who was personally committed to enforcing the church attendance laws and who diligently provided the names of known violators might drive up the number of presentments made by each jury on which he served. If he served on grand juries at several non-consecutive court sessions he would, over time, cause seemingly-random fluctuations in presentments for not attending church.

In fact, individual jurors influenced fluctuations in the York County presentments very little. When the mean number of presentments per session is calculated for each repeat juror, individual means can be compared to the overall mean of 7.9 presentments.²⁹ Of the sixty-one men who served at least three times as grand jurors, all but three had individual means between zero and fifteen.³⁰ Every man who served on more than five grand juries had an individual mean of less than 12.5 presentments. No one individual was consistently involved only in court sessions with unusually high numbers of presentments.³¹

²⁹The maximum number of presentments per session was 40; the minimum was zero. Number of presentments is known for thirty-five court sessions during this period.

³⁰The other three men had individual means of 18.8 (individual observations: 11, 15, 9, 40), 20 (27, 40, 2, 11), and 28.7 (40, 6, 40). Note that none of the men served exclusively on juries making unusually high numbers of presentments; each also served on at least one jury making a relatively low number of presentments.

³¹Neither were high numbers of presentments associated with any specific jury foreman. Two men served more than twice
(continued...)

Neither were specific jurors responsible for the repeated presentments of specific offenders. A computer program was used to match each juror who served on a specific date with each of the offenders presented on that date, and to count the number of times each juror appeared at the same court session as each offender. Eighty-eight percent of the pairs had only one court date in common. Only 12.4% of the remaining cases represent situations in which a specific juror served on at least half of the grand juries which presented a certain offender and the offender was presented by at least half the grand juries on which the juror sat. Only three of 3,276 pairs had a perfect correlation: the juror served on every grand jury which presented the offender and the offender was presented by every grand jury on which the juror served. Considering the amount of repetition in grand jury service and the number of repeat offenders,³² there is evidence of very little association between specific jurors and specific offenders.

York County grand jurors did not target people of low status, nor did they single out dissenters. Grand jury presentments were not dramatically affected by the growth

³¹(...continued)
as grand jury foreman; they had individual means of 7.5 (six sessions) and 7.7 (seven sessions) for the sessions at which they were foremen.

³²Fifty-six repeat offenders accounted for 161 of 272 total cases.

of the Separate Baptist movement; and they were only slightly influenced by local religious controversy and the idiosyncracies of individual jurors. No one factor fully explains the York County presentments for not attending church, but several trends suggest a variety of factors which influenced presentments.

Economic conditions influenced presentments: the two most dramatic peaks in presentments occurred during years of economic depression. The increased number of presentments between 1763 and 1766 coincided with a credit crisis and consequent depression in Virginia. Presentments jumped again in 1773 when Virginians were feeling the impact of a credit crisis which struck English merchants in 1772.³³ The correlation is not perfect; not every grand jury meeting during an economic depression presented large numbers of people for not attending church. It makes little sense to claim that economic hard times directly caused an increase in presentments for not attending church; but the association suggests that contemporary events and social tensions influenced grand jurors, even when those events and tensions did not directly involve religion.

Until the mid-1760s York County grand jurors presented more officeholders than people who never held office; 54%

³³Billings, Selby, and Tate, Colonial Virginia, 295-296, 322. Allan Kulikoff, Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake, 1680-1800, (Chapel Hill: University of North Carolina Press, 1986), 129.

of the individuals presented served in either a lesser or a higher office. Beginning in 1767, grand jurors presented fewer officeholders; only 38% of the individuals presented after that time held office.³⁴ The change is most dramatically visible in the presentments for November 1773; nineteen of the twenty-seven presentees for whom biographical information is known never held public office. In the years after 1767 grand jurors increased presentments of people whose status, as measured by officeholding, was relatively low. This trend forms the only significant evidence that York County grand jurors responded to the rise of dissent in Virginia by increasing presentments against people of lower status who failed to attend their parish churches.

Justices, on the other hand, responded to the rise of dissent with indifference. Between 1750 and 1765 only three presentments for not attending church went unresolved; the justices neither fined the individuals nor formally dismissed the cases. Forty-four of the presentments made after 1765 were never resolved.³⁵ As the Separate Baptist movement neared its peak in Virginia the

³⁴Of the presentments made before 1767, 7 (5%) involved men who held high office, 64 (49%) involved men who held lesser office, and 60 (46%) involved men who never held office. Of the presentments made in 1767 and after, 11 (17%) involved men who held high office, 13 (20%) involved lesser officeholders, and 40 (63%) involved those who held no office.

³⁵About two-thirds of the unresolved cases involved men who never held office.

York County justices displayed less interest in effectively enforcing church attendance laws than at any point in the preceding fifteen years.³⁶

Finally, jurors presented a disproportionate number of people in their late twenties and early thirties for failure to attend church. Exact birth dates are known for twenty-eight of the offenders, allowing calculation of age-at-presentment for forty-nine different instances of presentment.³⁷ Twenty-six to thirty-five-year-olds accounted for forty-five percent of the presentments, a larger percentage than their share in the overall

³⁶Gwenda Morgan found a similar trend in Richmond County, Virginia during the 1750s and 1760s when Presbyterian strength was growing. Morgan, "Law and Social Change in Colonial Virginia: The Role of the Grand Jury in Richmond County, 1692-1776," (Williamsburg, VA: Institute of Early American History and Culture, 1986, photocopy), 18-19. Cited by permission of the author.

³⁷See appendix: "Age."

population.³⁸ Grand jurors presented no one who was less than twenty-six years of age.

Historians have not studied the relationship between age and religion specifically in Virginia, but in the larger English religious culture the years between twenty-five and thirty-five formed a significant period in the religious life cycle. In England, Anglican reformers founded religious societies for eighteen to twenty-five-year-old men, believing that men in that age range were the least interested in religion; apparently men usually began to take an interest in religion by their mid- to late twenties. In colonial New England most men joined a church

³⁸Natural mortality contributed to the bulge in the lower age-ranges, but is not sufficient explanation. Four York County residents were presented while in their 20s, 23 in their 30s, 16 in their 40s, 4 in their 50s, and 2 in their 60s. Allan Kulikoff estimated that in the eighteenth-century Chesapeake about 94% of twenty-year-old men lived to be thirty, 82% lived to forty, 61% to fifty, 40% to 60, 21% to 70 and 4% to 80. By these estimates forty-year-olds are slightly underrepresented and fifty- and sixty-year-olds significantly underrepresented among the York County offenders when compared to thirty-year olds. No change in birthrate accounts for the phenomenon; the birthrate remained relatively constant in Tidewater Virginia during the first half of the eighteenth century. Kulikoff, Tobacco and Slaves: Population, Economy and Society in Eighteenth-Century Prince George's County Maryland, (Ann Arbor, MI: Xerox University Microfilms, 1976), 441, 444. Rutman and Rutman, Explicatus, 26.

A bias in the records may partially account for the larger number offenders known to have been young. No birth records and only fragments of the Bruton Parish baptism records survive from the years before 1739; exact age is less likely to be known for older parish residents. However, the age of only one offender can be determined from the Bruton Parish register. The births of 26 of the 28 offenders whose ages are known were recorded in the Charles Parish register which contains records from 1648 to 1789.

when they were in their late twenties or early thirties; women joined churches when they were in their mid- to late twenties.³⁹

The fact that grand jurors presented large numbers of people between the ages of twenty-six and thirty-five -- but no one younger than twenty-six -- suggests that they were influenced in their presentments by cultural ideas about age-appropriate behavior. They showed no interest in enforcing church attendance by people in their early twenties, a group with a reputation for religious indifference. Instead, they concentrated on those who had reached the age of expected religious maturity. Grand jurors used presentments for not attending church to nudge the reluctant into appropriate religious behavior.

³⁹Butler, Awash in a Sea of Faith, 33. Gerald F. Moran and Maris A. Vinovskis, Religion, Family, and the Life Course: Explorations in the Social History of Early America, (Ann Arbor: University of Michigan Press, 1992), 27, 69.

CONCLUSION

When eighteenth-century Virginians attended an Anglican worship service, they were reminded of the importance of their most prominent neighbors. The church -- the house of God -- resembled the homes of the wealthiest local residents, and contained many of the same types of furnishings. The vestrymen who governed the church came from the ranks of the local elite. Often they intentionally drew attention to themselves as they took their places in some of the most desirable pews. The worship service centered around the liturgy which emphasized deference. Given the setting, deference took on social as well as religious connotations.

In this respect, worship at an Anglican church in Virginia differed from worship at a Puritan meetinghouse in New England. The architecture of the Puritan meetinghouse, the governance of the church, and the content of the service reflected the Puritan emphasis on the equality of souls before God. Anglican churches lacked this egalitarian emphasis.

In fact, Virginia's Anglican churches were less democratic than Anglican churches in England. The

governing vestries of Virginia churches were both more exclusive and more powerful than their English counterparts.

Because the rituals of Anglican church attendance reinforced their positions as community leaders, prominent Virginians seemingly had every reason to want to ensure that most Virginians attended Anglican churches regularly. As officials of the county courts, members of the elite had the opportunity to encourage religious participation through the enforcement of church attendance laws.

However, the elite of York County -- represented by the gentlemen justices of the county court -- exhibited only lukewarm interest in enforcing church attendance, even when the rapid growth of the Baptist movement threatened the dominance of the Anglican Church. Under the grand jury system, justices had two primary opportunities to influence the presentment process. They were responsible for making sure that grand juries met twice a year. They also ultimately decided the outcomes of presentments. During the period of rapid Baptist growth in the late 1760s and early 1770s, the York County justices failed to fulfill their responsibilities consistently. Grand juries met less regularly during this period than in previous years. After 1766 justices failed to resolve many of the cases brought to their attention. The result was a large number of effective dismissals during the period when tensions over the Baptist movement were highest.

In contrast to the justices, York County grand jurors did respond to the growth of Separate Baptist congregations, but their response was neither dramatic nor consistent. In the mid- 1760s jurors began presenting increased numbers of York County residents of relatively low status, exactly the kind of people whose attraction to the Baptist faith might be perceived as a threat to the established social order. Throughout the third quarter of the eighteenth century, jurors presented individuals who had violated community standards in a variety of ways. However, they also presented community leaders, and they never harassed dissenters by presenting them for failing to attend church.

At the height of the Separate Baptist movement, the gentlemen justices of York County appeared uninterested in enforcing the church attendance laws. Grand jurors were more conscientious, and anxieties about the Baptist movement influenced their presentments slightly. However, neither justices nor jurors seem to have been motivated primarily by a concern about the social implications of church attendance. No one group made a concerted effort to use the process of grand jury presentments to serve its own social interests.

Jurors and justices did not act primarily from social anxieties, but they do not seem to have been driven by deep or constant religious concerns either. Jurors enforced the law inconsistently, presenting forty people at some court

sessions, zero at others. It is unlikely that actual church-going behavior varied so greatly from year to year; probably jurors enforced the law more enthusiastically in some years than in others.

In Massachusetts, the number of church disciplinary actions for not attending church varied from year to year, but the variations formed a pattern which corresponded to contemporary religious events; disciplinary actions for not attending church increased during the Great Awakening and again during the rise of skepticism and deism.¹ No such pattern existed for the York County presentments. Religious debate and controversy in Virginia and York County did not perceptibly affect numbers of presentments. In fact, economic fluctuations were the only contemporary events which seemed to influence the otherwise-random variations in presentments.

York County's courtroom presentments for not attending church did not have the same air of gravity as an individual Puritan church's disciplinary proceedings. Wayward Puritans had to appear before a meeting of fellow church members specifically to answer questions about their failure to attend church. They were subjected to public scrutiny and embarrassment in front of friends and family.

Since the monthly meetings of Virginia county courts were important business and social events, court sessions

¹Oberholzer, Delinquent Saints, 48.

also held the potential for public embarrassment. However, this potential was not realized during prosecutions for not attending church. Officials of the court did not require those accused of not attending church to publicly explain their behavior. In fact, most of the accused never appeared in court to answer the charges against them. The greatest embarrassment they faced was having their names read into the court records along with many other names, and most offenders were not even present to feel abashed at this public censure.

In York County, presentments for not attending church almost always followed the same pattern: jurors made presentments, the sheriff summoned the accused, the accused failed to appear, the justices fined the accused. This process was repeated twice a year and the clerk dutifully recorded each new list of names in the court records. He almost always used the same wording, with nothing except the name and parish to distinguish one case from the next. His accounts of the proceedings depict presentments as one small element of the routine bureaucracy of the county court. There is nothing to suggest that the prosecution of people who failed to attend church was an important cultural ritual, or even a matter of particular interest except as one of several routine items on the agenda.

Justices and jurors seem to have participated in the presentment process because they were required to by law, rather than because the process held any deep cultural or

religious meaning for them. Jurors were probably influenced in their presentments by a number of different expectations and prejudices. We can speculate that they had James Pride's antisocial behavior in mind when they presented him, that they were rebuking Bethia Hickerson as much for bastardy as for not attending church. They may have been reminding James Dixon that regular church attendance was seemly for a churchwarden, or prodding Butts Roberts into more mature religious behavior.

None of these scenarios can be proved, but all seem plausible. Taken together, they suggest that grand jury presentments for not attending church did not have one single central motivation or meaning. They were not spontaneous expressions of community concern as in New England. Neither were they a subtle form of social control exercised selectively by the Virginia elite. Although the architecture, ritual, and traditions of Virginia's Anglican churches symbolically affirmed the domination of the gentry, prosecutions for not attending church were not shaped primarily by social concerns. Instead they were influenced by a loose collection of attitudes and expectations concerning church attendance which jurors applied inconsistently -- almost haphazardly -- during the third quarter of the eighteenth century. This lack of consistency in the presentment process suggests the masked instability of the Virginia Anglican church which would

disintegrate in the years during and after the American Revolution.

APPENDIX

METHODS

Biographical Information

For biographical information included in this paper I have used both the Master Biographical File and the Biographical Worksheets compiled by members of the Department of Historical Research at the Colonial Williamsburg Foundation; these resources were created through Grants RS-00033-80-1604 and RO-20869-85 from the National Endowment for the Humanities. They include transcripts from the York County court records, surviving parish records, selected materials from the records of the College of William and Mary and private papers, and relevant material from the Virginia Gazette and the records of the General Assembly. Any biographical facts not explicitly attributed to another source may be assumed to come from these files.

In cases where more than one individual had the same name I have, when possible, followed the divisions made by the Colonial Williamsburg historians; in this system a number following an individual's given name distinguishes

that person from others of the same name. When references to individuals of the same name had not already been separated, I was sometimes able to make divisions myself, at least for the specific records I was interested in. In many more cases I had to leave out information which may be pertinent because of the possibility of confusion between two individuals.

When I was not satisfied that I could accurately differentiate between different individuals of the same name, I did not include any information about the individual's age, wealth, occupation or officeholding history in the data I coded. I deleted observations for all such grand jurors before running programs to calculate mean number of presentments per juror and to match individual grand jurors with individual offenders. However, in counting the number of repeat offenders and in matching offenders with jurors, I assumed that all presentments citing the same name involved the same individual, unless there was concrete evidence to the contrary. This decision was based upon a pattern of repeat offenses among many of the offenders whose biographies were known for certain.

Occupation

I coded occupations based on explicit descriptions in court records and other eighteenth-century documents (e.g. references to "John Smith, planter" or advertisements for

specific services in the Virginia Gazette). Planters were less likely than tradesmen to leave documents which explicitly described their occupation; many, if not most, of the people whose occupations can not be identified must have been planters. I coded individuals who had multiple occupations according to what seemed to be their primary occupation and means of livelihood at the time of presentment. I classified the specific occupations of York County offenders as follows:

Planter: planter (12).

Merchant: merchant (3).

Tavernkeeper: tavernkeeper (7).

Trade: blacksmith (1), bricklayer (1), carpenter (4), harnessmaker (1), shoemaker (3), staymaker (1), tailor (1), weaver (1), wigmaker/barber (5).

Professional: dancing master (1), schoolmaster (1), surgeon (1).

Unknown: (124).

Inventory Values

Values were rounded to the nearest pound and converted to constant pounds (1700 pounds) by the same method used by the Rutmans: a price index developed by P. G. M. Harris published in Paul G. E. Clemens' The Atlantic Economy and Colonial Maryland's Eastern Shore: From Tobacco to Grain, (Ithaca, NY: Cornell University Press, 1980), 228. Rutman and Rutman, Explicatus, 130.

Officeholding

Individuals were coded according to the highest office they ever held. I modified the categories of offices used by the Rutmans (Explicatus, 136-137, 142, 161). They classified offices as "low," "low middle," "middle," "high middle," and "high." I have classified all the offices they termed "low," "low middle," or "middle" as lesser offices. The offices they defined as "high middle" or "high" I have classified as high offices. A few York County residents held offices not included in the Rutmans' categories. I have assigned categories to those offices myself; they are marked with an asterisk below. York County residents who were presented for not attending church held the following offices:

Lesser offices: appraiser of estates, auditor of accounts, constable, grand juror, *land survey juror, petit juror, surveyor of highways (surveyor of streets and landings), tithetaker, undersheriff.

High offices: churchwarden, justice, *member of Williamsburg Committee of Safety, *Naval Officer of the York River, *public armourer, *vendue master.

Age

Age (to the nearest month) was calculated for every individual whose birth date or birth year is known. Dates before September 1752 were corrected to make them compatible with the calendar in effect after 1752. For

instance, January 15, 1738/9 was treated as January 15, 1739. (No attempt was made to correct the days or months in order to compensate for the days lost in 1752.)

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